

LAKPUE DRUG, INC., LA CROESUS PHARMA, INC., TROPICAL BIOLOGICAL PHILS., INC. (ALL KNOWN AS LAKPUE GROUP OF COMPANIES) AND/OR ENRIQUE CASTILLO, JR., PETITIONERS, VS. MA. LOURDES ...

G.R. NO. 166379. October 20, 2005

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Before us is a petition for review of the July 28, 2004 Decision[1] of the Court of Appeals in CA-G.R. SP No. 80616 which reversed and set aside the April 14, 2003 Decision[2] of the National Labor Relations Commission (NLRC) in NLRC NCR 00-09-04981-01; and its December 17, 2004 Resolution[3] denying the motion for reconsideration.

Petitioner Tropical Biological Phils., Inc. (Tropical), a subsidiary of Lakpue Group of Companies, hired on March 1, 1995 respondent Ma. Lourdes Belga (Belga) as bookkeeper and subsequently promoted as assistant cashier. On March 19, 2001, Belga brought her daughter to the Philippine General Hospital (PGH) for treatment of broncho-pneumonia. On her way to the hospital, Belga dropped by the house of Marylinda O. Vegafria, Technical Manager of Tropical, to hand over the documents she worked on over the weekend and to give notice of her emergency leave.

While at the PGH, Belga who was pregnant experienced labor pains and gave birth on the same day. On March 22, 2001, or two days after giving birth, Tropical summoned Belga to report for work but the latter replied that she could not comply because of her situation. On March 30, 2001, Tropical sent Belga another memorandum ordering her to report for work and also informing her of the clarificatory conference scheduled on April 2, 2001. Belga requested that the conference be moved to April 4, 2001 as her newborn was scheduled for check-up on April 2, 2001. When Belga attended the clarificatory conference on April 4, 2001, she was informed of her dismissal effective that day.

Belga thus filed a complaint with the Public Assistance and Complaint Unit (PACU) of the Department of Labor and Employment (DOLE). Attempts to settle the case failed, hence the parties brought the case before the NLRC-NCR.

Tropical, for its part, averred that it hired Belga on March 1, 1995 as a bookkeeper and later promoted to various positions the last of which was as "Treasury Assistant". Tropical claimed that this position was not merely clerical because it included duties such as assisting the cashier in preparing deposit slips, bills purchased, withdrawal slips, provisional receipts, incoming and outgoing bank transactions, postdated checks, supplier's checklist and issuance of checks, authorities to debit and doing liaison work with banks.

Tropical also alleged that Belga concealed her pregnancy from the company. She did not apply for leave and her absence disrupted Tropical's financial transactions. On March 21, 2001, it required Belga to explain her

unauthorized absence and on March 30, 2001, it informed her of a conference scheduled on April 2, 2001. Tropical claimed that Belga refused to receive the second memorandum and did not attend the conference. She reported for work only on April 4, 2001 where she was given a chance to explain.

On April 17, 2001, Tropical terminated Belga on the following grounds: (1) Absence without official leave for 16 days; (2) Dishonesty, for deliberately concealing her pregnancy; (3) Insubordination, for her deliberate refusal to heed and comply with the memoranda sent by the Personnel Department on March 21 and 30, 2001 respectively.[4]

The Labor Arbiter ruled in favor of Belga and found that she was illegally dismissed, thus:

WHEREFORE, the termination of complainant is hereby declared illegal. ACCORDINGLY, she should be reinstated with full backwages, which as of May 31, 2002, now amounts to P122, 248.71.

Ten (10%) percent of the total monetary award as attorney's fees is likewise ordered.

SO ORDERED.[5]

Tropical appealed to the NLRC, which reversed the findings of the labor arbiter in its Decision dated April 14, 2003, thus:

WHEREFORE, in the light of the foregoing, the assailed Decision is REVERSED and SET ASIDE. We thereby render judgment:

(1) declaring complainant-appellee's dismissal valid; and

(2) nullifying complainant-appellee's monetary claims.

SO ORDERED.[6]

Upon denial of the motion for reconsideration on September 24, 2003,[7] Belga filed a petition for certiorari with the Court of Appeals which found in favor of Belga, thus:

WHEREFORE, premises considered, the Decision promulgated on April 14, 2003 and the Resolution promulgated on September 24, 2003 of the public respondent National Labor Relations Commission are hereby REVERSED and SET ASIDE. The decision of the Labor Arbiter dated June 15, 2002 is hereby REINSTATED.

SO ORDERED.[8]

Hence, Tropical filed the instant petition claiming that:

I.

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ERROR IN HOLDING THAT RESPONDENT WAS ILLEGALLY DISMISSED.

II.

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ERROR IN DISREGARDING THE FINDINGS OF THE NATIONAL LABOR RELATIONS COMMISSION.[9]

The petition lacks merit.

Tropical's ground for terminating Belga is her alleged concealment of pregnancy. It argues that such non-disclosure is tantamount to dishonesty and impresses upon this Court the importance of Belga's position and the gravity of the disruption her unexpected absence brought to the company. Tropical also charges Belga with

insubordination for refusing to comply with its directives to report for work and to explain her absence.

Tropical cites the following paragraphs of Article 282 of the Labor Code as legal basis for terminating Belga:

Article 282. Termination by employer. - An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

....

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

We have defined misconduct as a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. The misconduct to be serious must be of such grave and aggravated character and not merely trivial and unimportant. Such misconduct, however serious, must, nevertheless, be in connection with the employee's work to constitute just cause for his separation.[10]

In the instant case, the alleged misconduct of Belga barely falls within the situation contemplated by the law. Her absence for 16 days was justified considering that she had just delivered a child, which can hardly be considered a forbidden act, a dereliction of duty; much less does it imply wrongful intent on the part of Belga. Tropical harps on the alleged concealment by Belga of her pregnancy. This argument, however, begs the question as to how one can conceal a full-term pregnancy. We agree with respondent's position that it can hardly escape notice how she grows bigger each day. While there may be instances where the pregnancy may be inconspicuous, it has not been sufficiently proven by Tropical that Belga's case is such.

Belga's failure to formally inform Tropical of her pregnancy can not be considered as grave misconduct directly connected to her work as to constitute just cause for her separation.

The charge of disobedience for Belga's failure to comply with the memoranda must likewise fail. Disobedience, as a just cause for termination, must be willful or intentional. Willfulness is characterized by a wrongful and perverse mental attitude rendering the employee's act inconsistent with proper subordination.[11] In the instant case, the memoranda were given to Belga two days after she had given birth. It was thus physically impossible for Belga to report for work and explain her absence, as ordered.

Tropical avers that Belga's job as Treasury Assistant is a position of responsibility since she handles vital transactions for the company. It adds that the nature of Belga's work and the character of her duties involved utmost trust and confidence.

Time and again, we have recognized the right of employers to dismiss employees by reason of loss of trust and confidence. However, we emphasize that such ground is premised on the fact that the employee concerned holds a position of responsibility or trust and confidence.[12] In order to constitute a just cause for dismissal, the act complained of must be "work-related" such as would show the employee concerned to be unfit to continue working for the employer.[13] More importantly, the loss of trust and confidence must be based on the willful breach of the trust reposed in the employee by his employer. A breach of trust is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently.[14]

Belga was an assistant cashier whose primary function was to assist the cashier in such duties as preparation of

deposit slips, provisional receipts, post-dated checks, etc. As correctly observed by the Court of Appeals, these functions are essentially clerical. For while ostensibly, the documents that Belga prepares as Assistant Cashier pertain to her employer's property, her work does not call for independent judgment or discretion. Belga simply prepares the documents as instructed by her superiors subject to the latter's verification or approval. Hence, her position cannot be considered as one of responsibility or imbued with trust and confidence.

Furthermore, Tropical has not satisfactorily shown how and to what extent it had suffered damages because of Belga's absences. For while it may be true that the company was caught unprepared and unable to hire a temporary replacement, we are not convinced that Belga's absence for 16 days has wreaked havoc on Tropical's business as to justify her termination from the company. On the other hand, it is undisputed that Belga has worked for Tropical for 7 years without any blemish on her service record. In fact, the company admitted in its petition that she "has rendered seven (7) years of service in compliance with [the company's] rules".^[15] And her fidelity to her work is evident because even in the midst of an emergency, she managed to transmit to the company the documents she worked on over the weekend so that it would not cause any problem for the company.

All told, we find that the penalty of dismissal was too harsh in light of the circumstances obtaining in this case. While it may be true that Belga ought to have formally informed the company of her impending maternity leave so as to give the latter sufficient time to find a temporary replacement, her termination from employment is not commensurate to her lapse in judgment.

Even assuming that there was just cause for terminating Belga, her dismissal is nonetheless invalid for failure of Tropical to observe the twin-notice requirement. The March 21, 2001 memorandum merely informed her to report for work and explain her absences. The March 30, 2001 memorandum demanded that she report for work and attend a clarificatory conference. Belga received the first memorandum but allegedly refused to receive the second.

In *Electro System Industries Corporation v. National Labor Relations Commission*,^[16] we held that, in dismissing an employee, the employer has the burden of proving that the worker has been served two notices: (1) one to apprise him of the particular acts or omissions for which his dismissal is sought, and (2) the other to inform him of his employer's decision to dismiss him. The first notice must state that the dismissal is sought for the act or omission charged against the employee, otherwise the notice cannot be considered sufficient compliance with the rules. It must also inform outright that an investigation will be conducted on the charges particularized therein which, if proven, will result to his dismissal. Further, we held that a notation in the notice that the employee refused to sign is not sufficient proof that the employer attempted to serve the notice to the employee.

An employee who was illegally dismissed from work is entitled to reinstatement without loss of seniority rights, and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.^[17] Thus, Belga is entitled to be reinstated to her former or equivalent position and to the payment of full backwages from the time she was illegally dismissed until her actual reinstatement.

WHEREFORE, the instant petition is DENIED. The July 28, 2004 Decision of the Court of Appeals in CA-G.R. SP No. 80616 and its December 17, 2004 Resolution are AFFIRMED in toto.

SO ORDERED.

Davide, Jr., C.J., Quisumbing, Carpio, and Azcuna, JJ., concur.

- [1] Rollo, pp. 36-43. Penned by Associate Justice Eliezer R. De Los Santos as concurred in by Associate Justices Delilah Vidallon-Magtolis and Arturo D. Brion.
- [2] Id. at 105-113. Penned by Commissioner Raul T. Aquino as concurred in by Commissioner Victoriano R. Calaycay.
- [3] Id. at 45.
- [4] Id. at 107.
- [5] Id. at 74.
- [6] Id. at 112.
- [7] Id. at 114.
- [8] Id. at 42-43.
- [9] Id. at 9.
- [10] Colegio de San Juan de Letran-Calamba v. Villas, 447 Phil. 692, 699 (2003).
- [11] St. Michael's Institute v. Santos, 422 Phil. 723, 734 (2001).
- [12] Coca-Cola Bottlers Phils., Inc. v. Kapisanan Ng Malayang Manggagawa sa Coca-Cola-FFW, G.R. No. 148205, February 28, 2005, 452 SCRA 480, 501.
- [13] Etcuban, Jr. v. Sulpicio Lines, Inc., G.R. No. 148410, January 17, 2005, 448 SCRA 516, 529.
- [14] Diamond Motors Corporation v. Court of Appeals, G.R. No. 151981, December 1, 2003, 417 SCRA 46, 50-51.
- [15] Rollo, p. 13.
- [16] G.R. No. 165282, October 5, 2005.
- [17] Article 279 of the Labor Code.

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